05-302 (3)

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR.

SECOND APPEAL NO. 164 OF 2004 Single Bench

APPELLANTS / DEFENDANTS No.1 to 8 & 10 :

1. Devlal son of Chhabilal, aged 42 years.
2. Dataram son of Noharsai, aged 55 years.
3. Bhogilal son of Shivprasad, aged 55 years.
4. Raghu son of Sukhiram, aged 58 years.
5. Kachara Bai widow of Rameshar, aged 53 years,
6. Gomati Bai daughter of Rameshar aged 30 years.
7. Gayatri Bai daughter of Rameshar aged 28 years,
8. Mohataram son of Rameshar, aged 26 years.
9. Sumitra Bai ~~xxxxx~~ D/o. Rameshar aged 23 years,
10. Sumrit Bai daughter of Rameshar, aged 21 years,
11. Amrit Bai daughter of Rameshar, aged 18 years,
12. Hemlal son of Malikram, aged 45 years,
13. Rohit son of Malikram, aged 50 years
14. Danau son of Shatruhan, aged 44 years,
15. Alekhram son of Kanshiram, aged 45 years,

All caste- Chandra, resident of Village-Khaira, Tah. Dabhara, Distt.

P.R. No. 784/04 presented by Shri M.B. Agrawal dated 22.03.04

RECEIVED COPY 23/3/04 Clerk to A.G. Bilaspur

(4)

Janjgir- Champa (C.G.).

VERSUS

RESPONDENTS : 1. Lakhan lal son of Kashiram, aged 38 years, ... Plaintiff

2. Ramkunwar widow of Kushal Prasad aged 65 years,

3. Shyam Bai daughter of Kushal-Prasad wife of Mahadeva, aged 32 years,

4. Jamuna Bai daughter of Kushal Prasad wife of Surendra Kumar, aged 30 years.

All by caste- Chandra resident of village - Khaira, Tahsil Dabhara, District Janjgir-Champa (C.G.)... ... L.R.'s of Deft.9

5. State of Chhattisgarh Through - Collector, District Janjgir-Champa (C.G.)

Defendant No.11.

APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE.

(18)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

Second Appeal No.164 OF 2004

Devlal and others
Vs.
Lakhanlal and others

JUDGMENT

Post for 15 **.12.2004**

Sd/-
Sunil Kumar Sinha
Judge

Noted.
15/12/04
for the Appt

(19)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

Second Appeal No.164 OF 2004

Devlal and others
Vs.
Lakhanlal and others

Shri Hari Bhagat Agrawal, Counsel for the appellants.

JUDGMENT
(15-12-2004)

SUNIL KUMAR SINHA, J

Heard on the question of admission.

(2) This appeal under section 100 of the Code of Civil Procedure has been filed against the impugned judgment and decree dated 11.02.2004 & 13.2.2004 passed in Civil Appeal No.6-A/2001 by the Additional District Judge, Sakti, District Bilaspur, arising out of judgment and decree dated 30.11.2000 passed in Civil Suit No.1-A/1988 by the Civil Judge, Class-II, Sakti, District Bilaspur (C.G).

(3) The plaintiff namely Lakhanlal filed a suit for permanent injunction praying that the defendants be restrained from interfering with the irrigation works which he used to do by taking water from a tank situated in Khasra No.457 area 2.17 acres.

(4) The trial Court allowed the suit by passing a decree for permanent injunction restraining the defendants that they will

not interfere with the irrigation work of the plaintiff by taking water from the tank of Khasra Number referred to above for irrigating his agricultural lands bearing Khasra Nos.366/2, 367 and 489 total area 0.79 acres. Against the aforesaid judgment and decree passed by the trial Court, the defendants filed an appeal before the lower appellate Court but the lower appellate Court dismissed their appeal confirming the judgment and decree passed by the trial Court. In this way, the defendants lost in both the courts and now they have come up in Second Appeal before this Court.

(5) The plaint allegations are that the plaintiff is the owner of Khasra Number 366/2, 367 and 489 areas 0.68 acres, 0.07 acres and 0.04 acres respectively which he had received in the family partition. These lands are adjacent to the tank which is situated in Khasra No.457 area 2.17 acres. It is further alleged that the tank is the ancestral property of the plaintiff and since long back, the above agricultural lands are being irrigated by this tank.

(6) The cause of action for filing the suit arose in the month of December 1985 when the defendants interfered with the irrigation work and they threatened the plaintiff to stop the same. They contended that the plaintiff was having no right or authority to irrigate the agricultural lands from the aforesaid tank.

(7) The defendants filed their written statement denying the contentions of the plaintiff. It was pleaded by them that the suit lands were not received by the plaintiff in partition. The

plaintiff has filed the suit for permanently terminating the rights of irrigation of the defendants from the said tank and the suit has been filed on false and fictitious grounds.

(8) Learned trial Court framed various issues in this case and after recording the evidence of the parties decreed the suit of the plaintiff holding that the plaintiff was having a right of irrigation from the said tank situated in Khasra No.457. Vide issue no.1 it was determined that the suit lands referred to in para 1 of the plaint belong to the plaintiff, however, the tank in question belongs to both the parties.

(9) Against the aforesaid judgment and decree passed by the trial Court, the defendants filed an appeal before the lower appellate Court. The lower appellate Court dismissed their appeal and confirmed the judgment and decree passed by the trial Court. The lower appellate court also recorded a finding that the trial Court has rightly held that there was a partition in the family and in the said partition, the suit lands bearing Khasra Nos.366/2, 489, 367 were received by the plaintiff. It was also determined that the tank in question was never put to partition in their family and both the parties are having right and interest over the said tank and both the parties were entitled to carry on irrigation from the said tank. In this way, the concurrent finding has been recorded by the two courts below saying that the tank in question is a joint family property and none of the parties can be stopped from doing irrigation works from the said tank.

(10) Now learned counsel for the appellant argues in the second appeal that the findings in relation to partition as well as ownership of the tank are perverse and the same may be set aside.

(11) I have gone through the records of the two Courts below and have also perused the impugned judgment and decree passed by them. A concurrent finding in relation to the partition as well as the ownership and user of the tank has been recorded by the two courts below, which are based on evidence on record and there is no perversity in the same. Hence, there is no reason with this Court to interfere with the said findings under section 100 of Code of Civil Procedure. In fact, learned counsel for the appellant could not point out any perversity in the findings concurrently recorded by the two Courts below.

(12) It is important to mention this fact here that this Court is dealing with this matter in a second appeal in which jurisdiction is limited to the provisions of Section 100 C.P.C. Hon'ble the Apex Court has held that under Section 100 of the Code of Civil Procedure, the jurisdiction of the Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with the pure questions of fact while exercising its jurisdiction u/s 100 C.P.C (***Please see Roop Singh (Dead) through LRs –Vs- Ram Singh (Dead) through LRs*** reported in ***(2000) 3 SCC 708***. It is also to be noted that the existence of substantial question of

(23)

law is the *sine qua non* for the exercise of jurisdiction under the amended provisions of Section 100 of the Code of Civil Procedure and unless such questions are involved, the appeals are not to be entertained (***Please see Thiagarajan and others Vs. Sri Venugopalaswamy B. Koil and others*** reported in ***(2004) 5 SCC 762).***

(13) Having heard learned counsel for the appellant and considering the facts and circumstances of the case, entire material on record and in view of the above referred decisions of the Apex Court, this Court finds that the partition as well as the ownership and user of the tank are the pure questions of the fact which have been rightly dealt with by the two Courts below and since the concurrent findings were recorded by them, there is no reason to interfere with the aforesaid findings at the appellate stage u/s 100 of the Code of Civil Procedure. Consequently, since no substantial question of law is involved in the appeal, this appeal fails and is dismissed at the admission stage itself with no orders as to costs.

Sd/-
Sunil Kumar Sinha
Judge

Rao

19
23.12.09